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Home (1949) Department

Ms SERIES

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Dated	13-7-49

[Despatch Abstract.]

Law Officers - Mufassal Appointments - procedure - Status-quo to Continue - papers recorded

HOME DEPARTMENT.

LAW OFFICERS - Mufassal - Goverment Pleaders. Public Prosecutors

Additional Public Prosecutors - Appointments - Procedure.

The existing instructions regarding procedure to be followed in the appointment of Government Pleaders, Public Prosecutors and Additional Public Prosecutors in the mufassal are as follows:-

" The names of all the candidates who have applied for the above appointments or whose claims are considered by the District Magistrate and District and Sessions Judge irrespective of whether they have applied or not, are forwarded to the Government with remarks as to the merits and qualifications of each. The willingness of the person considered most suitable for the appointment is also ascertained. Information as to the date of birth or approximate age of each candidate and the community to which he belongs is also obtained.

The recommendation of the District Magistrates should reach Government at least 3 weeks before the expiry of the term of appointment of the existing incumbent

The above instructions are contained in Memorandum No. 3465-F1 Home dated 5th June 1937 and No. 13373-F1 Home dated the 28th September 1937. The above instructions were reiterated in Memorandum No. 10312-F1 Home dated the 28th March 1939.

Regarding the publicity to be given to the vacancies, the instructions are in G.O. No. 2308 Home dated 6th August 1946.

2. The instructions in the Memoranda of 1937 were superseded in 1938 during the first Congress Ministry. The then Premier, Sri C. Rajagopalachariar, in consultation with the Honourable the Minister for Courts and Prisons and most of other Honourable Ministers prescribed for following procedure:-

> "The Bar Association of the place where the district court is situate should be requested to select a panel of 4 candidates and submit their names to the District Judge. In selecting this panel, the Bar Associations should be requested to adopt the procedure of open voting and process of successive elimination. The District Magistrate in consultation with the District and Sessions Judge should forward to Government the names of the candidates on the panel giving their views on the qualifications and merits of each and making a definite recommendation for the appointment."

The submission of recommendation of the District Magistrates at least 3 weeks before the expiry of the term of appointment of the existing incumbent was, however, retained vide Memorandum No. 1338-F1 Home dated the 15th February 1938.

3. In March 1938, representations were received from certain Bar Associations and the District Magistrates of Chingleput and North Arcot in regard to the above procedure. As certain doubts were raised as to the scope of the instructions, the Government made their intentions clear as follows

"It is intended that all lawyers practising regularly, in courts at the place where the District Court is situated whether they are or are not members of the Bar Association, should be eligible to vote as electors for the panel and to be elected to the panel. It is not the intention of the Government that advocates practising ordinarily in subordinate courts elsewhere in the district should take part in the proceedings.

District Judges are therefore requested, when the occasion arises, to request the ~~Bear Bear-Ass~~Bar Association to

hold such a meeting and submit a panel of four names and it will be taken that the gentlemen whose names appear on the panel have consented to accept the post which then is or is about to be vacant.

District Magistrates should submit the list to Government with such recommendations as they consider desirable after consulting the District Judges. If the District Magistrate considers that the panel does not include a lawyer who according to him is the most suitable for the post, it is open to the District Magistrate to set out his reasons and to recommend for appointment such a person.

The Government consider that gentlemen who will attain the age of 55 within three years of the date of the vacancy should not be included in the panel" - vide Memorandum No. 8694 F-3 Home dated 23rd June 1948.'

4. In July 1948, the Madras Legislative Council recommended to the Government to cancel the Government Order calling upon the various District Barr Associations to recommend a panel of names for appointment as Government Pleaders and Public Prosecutors. It was then considered that if the resolution came up, it was best. Government expressed no opinion but simply heard the discussion.

When the copies of the note on the resolution was circulated to all the Honourable the Ministers. they minuted as follows:

"Since the interudction of the Panel System there have been 7 or 8 elections. In almost all cases there have been ~~of one~~ complaints of one sort of another. There seems to be a good deal of misunderstanding as regards the objects and the scope of the Government Proceedings regarding this matter. Almost all the Bar Associations are complaining about the method of election. They say that open voting system will bring about ill-will and bickerings, and it would appear as if they are unwilling to face the consequences of open voting. In some cases, the Bar Associations have got out the difficulty by having a secret ballot before the regular voting. They avoid open voting by coming to an agreement that those who have been defeated at the secret ballot should withdraw from the contest. When the Bar Assoications are unwilling to co-operate with us, there is no meaning in our continuing the new procedure. I have had enough of trouble on account of the panel system. Taking every circumstance into consideration I am inclined to scrap the system and revert to the old method. If the Honourable Ministers are all agreeable to this, a press note may be issued why the Government dropped the system and the District Magistrates may be informed. Please circular to all Honourable Ministers.

K.R.M./23-8.

May be dropped.

T.P./24.8.1938

The panel system has proved a failure and has roused much communal ill-will. It will be a mistake to keep it up. The procedure as at A on p.4 ante appears to me to be more suitable than the panel.

Y.K./26.8.1938

I think we ought to revert to the old method as at A on p.4 and the panel system may therefore be dropped. I am afraid it has led to plenty of communal feeling being unnecessarily roused.

P.S./29-8-1938

The old system was considered as unfair and so the new panel system was adopted. What about secret ballot? Will it not obviate trouble. With regard to communal claims, they come only from weak people who have not established their claims in the bar otherwise. If the lawyers themselves do not want this procedure, it is another matter. But if they want the panel and a secret ballot this may be adopted. Otherwise the only choice is to revert to old practice.

T.S.S.R/30.8.1948

The panel system is preferable to the old method but the real spirit of selection is not appreciated. The result in the 8 cases shows one particular community scoring more numbers in the panel which cannot be helped as that particular community predeominates in the Bar Association. The results have been misrepresented by the interested people and they create communal jealousy. In view of these, I consider the panel system may be dropped.

J.V.I.M/30-5.38

J.V.G/31.8.38; S.R./31.8.1938

The main idea in the panel system was to get one who is efficient and popular in the bar and secondly the minister in charge should be saved from canvassing. But the panel system has neither given the best man in the bar nor the minister is saved of the botheration. This system created factions when none existed. All sorts of subterfuges were employed to secure the panel-election. The Bar Association proved no better than an ordinary Panchayat Board. The best man, unless he stoops to the depths, has no chances and particular care was taken to eliminate that man in the first round. This system has proved a failure and the sooner it goes, the better. The old system may be revived.

B.G.R/1-9-1938

The G.O. may be cancelled. But what procedure should take place may be put down by H.M.(C.&P.). I do not think "A" at p.3 would be right. It would mean that the whole burden will fall on the Government in each and every case.

C.R./1-9-1938

I think we might issue Memo to District Magistrates stating that the Government have cancelled that panel system and that the procedure laid down in Memo 3475 and Memo 13373 may be followed hereafter.

I am not able to suggest any other procedure. The procedure at A on p.3 includes also a specific recommendation by the D.M. from out of the various candidates whose claims have been considered. I do not think that the Govt. can divest itself of the burden. Please circulate to H.P.M.

K.R.M./3-9-

I would like to know if Home Secretary can suggest anything on this.

C.R./5-9-1938

Let us revert to the old system as described at A in Home Secretary's routine note

C.R/8-9-1938

Is it better that we simply say that the panel system as per Memo No.... is cancelled and the appointments to be made will be according to the rules and orders on this matter issued prior to Memo 3475 dated 5-6-1937. If we give the details we should take care that all that is necessary are incorporated Press note need not be issued.

K.R.M./16-9-

A I think this would be best.

C.R./17-9-1938

5. In September 1938, the panel system of selection and appointment of the Law Officers in the mufassal referred to in paras 2 - 3 above was cancelled and the rules and orders on the subject in force prior to the issue of the Memo of 1938 were restored, vide Memo No. 25759-F1 Home dated 22-9-1938.

As already stated, the Government re-iterated in Memo No.10312F/1 Home dated 28-3-1939 the instructions contained in the memoranda of 1937 which are now in force.

6. The instructions regarding the publicity to be given to the vacancies, which are contained in G.O. No. 2308 Home dated 6-8-1948, were issued at the instance of the then H.M. (Law), Sri K. Bashyam. Attention is invited to his minutes on p.2 of the G.O. is at L.

7. It may be mentioned in this connection that in September 1915 the Government directed that the District Superintendent of Police should be consulted, besides the District and Sessions Judge, before the District Magistrate submitted his nomination to Government. In November 1916, the direction given regarding consultation with the District Superintendent of Police was cancelled vide G.O. No. 2690 Home (Judicial) dated 15th November 1916.

8. It will be seen from above that the instructions in the Memoranda of 1937 were cancelled in 1938 during the office of the First Congress Ministry but they were also restored in September 1938 during their tenure.

9. The case may be circulated for orders whether the existing instructions referred to in para 1 above may continue or whether they require revision and if so, on what lines.

The above note is submitted with reference to the oral orders of the Secretary.

C.S.D./9-7
Dy.Secy.

Under the existing system applications are invited and all and sundry apply. The District Magistrates makes a selection in consultation with the District Judge and makes his recommendations to Government. I think the practice of inviting applications is definitely derogatory to the dignity of the Bar. When a vacancy is about to arise the District Magistrate should in consultation with the District Judge make his own recommendations. The District Magistrate and District Judge should know all the suitable men at the Bar. The need for inviting applications is not clear. Senior and established practitioners may not even care to apply and nothing is gained by inviting applications from persons who are prima facie ineligible for consideration.

O.P.R(eddi)/11.7.1949
Secretary.

The existing practice may continue. It allows lattitude to District Magistrates to consider the claims of those who have not or will not care to apply also. That obviates the difficulty suggested by the Home Secretary.

K.M(adhava) M(enon)/12.7.
H.M.(E.&.L.)

The papers may be "recorded" for facility of future reference. A copy of the note and orders in circulation may be added to the stock file relating to "Law Officers - ~~Government~~ General".

G.O. No.(Ms) 2871 dated the 13th July 1949

Sub: LAW OFFICERS - Mufassal - Appointments - Procedure - Status quo to continue - Papers recorded.

/True copy/

Superintendent,
Madras Record Office, Egmore

Sk.